IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

ORDER
IN
1. S.B. Civil Second Appeal No.19/2005

Bishandas S/o Shri Ganeshdas
...defendant-appellant
Versus
Kedar Nath S/o Shri Narain Sahai
...plaintiff-respondent

2. S.B. Civil Second Appeal No.18/2005

Laxmandas (since deceased) through his L.Rs.
Smt. Kanta Devi & Others AND Bishandas
...defendant-appellants
Versus
Kedar Nath S/o Shri Narain Sahai
...plaintiff-respondent

3. S.B. Civil Second Appeal No.552/2004

Kedar Nath S/o Shri Narain Sahai
...plaintiff-appellant
Versus
Smt. Kanta Devi W/o late Shri Laxmandas & Others
...defendant-respondents

4. S.B. Civil Second Appeal No.553/2004

Kedar Nath S/o Shri Narain Sahai
...plaintiff-appellant
Versus
Bishandas S/o Shri Ganeshdas
...defendant-respondent

Date of Order ::: 20.11.2006

Present
Hon'ble Mr. Justice Narendra Kumar Jain

Presence in Appeals No.18/05 & 19/05

Shri S.M. Mehta, Sr. Advocate, with
Shri Anil Mehta, Counsel for defendant-appellants
Shri M.M. Ranjan, Counsel for plaintiff-respondent

Presence in Appeals No.552/04 and 553/04

Shri M.M. Ranjan, Counsel for plaintiff-appellants
Shri S.M. Mehta, Sr. Advocate, with
Shri Anil Mehta, Counsel for defendant-respondents

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By the Court:-

These four appeals involve a common question of facts and law both, therefore, they are being disposed of by this common order.

The plaintiff-landlord Kedar Nath filed two separate suits for eviction in respect of two shops, which were let out to the defendants, namely, Bishandas and Laxmandas, on the ground of personal bona-fide necessity. The learned lower court recorded a finding that there is personal bona-fide necessity in favour of the plaintiff-landlord but the issue of comparative hardship was decided against plaintiff, therefore, the decree of eviction was not passed in both the suits. Being aggrieved with the same, two appeals were preferred by the plaintiff-landlord and two appeals were preferred by both the defendant-tenants.

During the pendency of the first appeal, the learned first appellate court framed an additional issue in respect of partial eviction of the rented premises and sent the same to the lower court to record evidence of the parties and findings in this

regard. The lower court, thereafter, recorded a finding that 2'x 11' of the suit premises in each shop can be given to the plaintiff-landlord. However, during the pendency of the first appeal, both the parties indirectly agreed that two shops rented out to the defendant-tenants be converted into three equal shops and one shop, out of three, may be given to the plaintiff-landlord as per his choice and remaining two shops may be kept by both the defendant-tenants. The learned first appellate court, while reversing the finding of the lower court in respect of comparative hardship, disposed of all the four appeals by passing a decree of eviction in favour of the plaintiff-landlord by directing that two shops let out to the defendant-tenants will be converted into three equal shops and one shop will be kept by the plaintiff-landlord as per his choice and two shops will be kept by the defendant-tenants. The expenses will be borne by both the parties equally. Being aggrieved with the same, these four appeals have been preferred; two by the plaintiff-landlord and two by two different defendant-tenants.

I have heard learned counsel for both the parties and after considering their submissions in the light of the findings of both the courts below, I find that the question of partial eviction, in the facts and circumstances of the present case, is purely a question of fact and there is concurrent finding of

fact in this regard by both the courts below, which cannot be interfered with by this court in second appeal under Section 100 C.P.C.

No substantial question of law is involved in any of these four second appeals and the same are hereby dismissed at admission stage itself with no order as to costs.

A certified copy of this order may be kept in remaining three files.

(Narendra Kumar Jain) J.

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